

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

March 2004

APRIL AND JUNE TRAINING SCHOOLS

The Indiana League of Municipal Clerks and Treasurers' Annual Conference will be held April 19 through April 22, 2004 at the Grand Wayne Center in Fort Wayne, Indiana. The State Board of Accounts and Department of Local Government Finance will be conducting a one day accounting and budgeting workshop on the third day of the conference (Wednesday – April 21). This day of the conference will qualify as a State – called meeting day.

The State Board of Accounts Annual School for Clerk-Treasurers, City Controllers and City Clerks will be held June 17 and 18, 2004 at the Marriott East Hotel, 7202 East 21st Street, Indianapolis, Indiana.

Please mark these dates on your calendar. Explanatory letters with tentative agendas will be mailed to all fiscal officers concerning both meetings.

PURCHASES OF COMPUTER HARDWARE AND SOFTWARE

The purchase of a computer system (hardware and software) is subject to the Public Purchases Law (IC 5-22); however, IC 5-22-10-7 allows a purchasing agent to make a special purchase of data processing contracts or license agreements for:

- (1) software programs; or
- (2) supplies or services, when only one (1) source meets the using agency's reasonable requirements.

If it is determined that a special purchase of data processing contracts or license agreements for software programs or supplies or services, the purchasing agent may make a purchase without soliciting bids or proposals. However, the special purchase must be made with competition as is practicable under the circumstances. (IC 5-22-10-2)

STATE AND FEDERAL MILEAGE RATES

The current mileage rate paid to State Employees in travel status is 34 cents per mile.

The current Federal mileage rate is 37 and ½ cents.

ABC EXCISE TAX

IC 7.1-4-9 requires all license fees paid in connection with the issuance of a beer retailer's permit, a beer dealer's permit, a liquor retailer's permit, a supplemental caterer's permit, a liquor dealer's permit, a wine retailer's permit, a wine dealer's permit, and supplemental retailer's permit that are received by the Alcohol and Tobacco Commission are to be deposited with the treasurer of state for deposit into an excise fund. Sixty-six and two-thirds percent (66 2/3%) of the moneys in the excise fund shall be paid into the general fund of the treasury of the city or town in which the retailer's or dealer's licensed premises are located and shall be budgeted according to law.

Distribution of the ABC Excise Tax shall be made by the auditor of state semiannually on the first day of June and first day of December of each year.

ABC GALLONAGE TAX

IC 7.1-4-7 requires the Alcoholic and Tobacco Commission to deposit four cents (\$0.04) of the beer excise tax rate collected on each gallon of beer; one dollar (\$1) of the liquor excise tax rate collected on each gallon of liquor; twenty cents (\$0.20) of the wine excise tax rate collected on each gallon of wine; the entire amount of malt excise tax collected, and the entire amount of hard cider excise tax collected into the state general fund for distribution to the state (50%) and cities and towns (50%).

The sum set aside for cities and towns shall be allocated to a city or town based upon the basis that the population of the city or town bears to the total population of all cities and towns of the state.

The auditor of state shall, on the first day of April of each year and quarterly thereafter, distribute these amounts to the general fund of the treasury of the city or town.

CUMULATIVE CAPITAL DEVELOPMENT FUND

IC 36-9-15.5 allows the legislative body of a municipality to, with the approval of the Department of Local Government Finance (DLGF), establish a cumulative capital development fund to provide money for any purpose for which property taxes may be imposed within the municipality under the authority of:

IC 8-16-3 (Cumulative Bridge Fund)
 IC 8-22-3-25 (Cumulative Building Fund-Airports)
 IC 14-27-6-48 (Cumulative Building Fund-Levees)
 IC 14-33-14 (Cumulative Maintenance Fund-Channel Improvement)
 IC 16-23-1-40 (Cumulative Hospital Building Fund)
 IC 36-8-14 (Cumulative Firefighting Fund)
 IC 36-9-4-48 (Cumulative Transportation Fund-Buses)
 IC 36-9-16-2 (Cumulative Building Fund)
 IC 36-9-16-3 (Cumulative Capital Improvement Fund)
 IC 36-9-16.5 (Cumulative Street Fund)
 IC 36-9-17 (General Improvement Fund)
 IC 36-9-26 (Cumulative Building Fund-Sewers)
 IC 36-9-27-100 (Cumulative Drainage Fund)
 IC 36-10-3-21 (Cumulative Building Fund-Parks) or
 IC 36-10-4-36 (Cumulative Sinking and Building Fund (Parks))

A municipality that decides to establish a cumulative capital development fund must give notice of the proposal to the affected taxpayers and hold a public hearing on the proposal before presenting it to the DLGF for approval.

Notice of the proposal and of the public hearing shall be given by publication in accordance with IC 5-3-1.

If, after the public hearing held under IC 6-1.1-41 the proposal is submitted for approval to the DLGF, the board shall require notice of that submission to be given to the taxpayers of the municipality in the manner prescribed by IC 6-1.1-41. Fifty (50) or more of the taxpayers in the municipality may file a petition setting forth their objections to the proposed levy with the county auditor not later than thirty (30) days after the publication.

The county auditor shall immediately certify a petition filed to the DLGF. The board shall within a reasonable time fix a date for a hearing on the petition, which shall be held in the affected municipality. Notice of the hearing shall be given to the county auditor and to the first ten (10) taxpayers whose names appear upon the petition by a letter that is signed by the secretary or any member of the board and mailed to the auditor and the taxpayers at their usual place of residence at least five (5) days before the date fixed for the hearing.

After the hearing, the DLGF shall certify its approval, disapproval, or modification of the proposal to the auditor of the county. The action of the board with respect to the proposed levy is final and conclusive.

Except as provided in IC 36-9-15.5-6 (c), the municipal fiscal body may provide money for the cumulative capital development fund by levying a tax on the taxable property in the municipality.

CUMULATIVE CAPITAL DEVELOPMENT FUND
(Continued)

The maximum property tax rate that may be imposed for property taxes first due and payable during a particular year in a municipality that is either wholly or partially located in a county in which the county option income tax or the county adjusted gross income tax is in effect on January 1 of the year depends upon the number of years the municipality has previously imposed a tax and is determined under the following table:

<u>NUMBER OF YEARS</u>	<u>TAX RATE PER \$100 OF ASSESSED VALUATION</u>
0	\$0.05
1	\$0.10
2 or more	\$0.15

The maximum property tax rate that may be imposed for property taxes first due and payable during a particular year in municipality that is wholly located in a county in which neither the county option income tax nor the county adjusted gross income tax is in effect on January 1 of that year depends upon the number of years the municipality has previously imposed a tax and is determined under the following table:

<u>NUMBER OF YEARS</u>	<u>TAX RATE PER \$100 OF ASSESSED VALUATION</u>
0	\$0.04
1	\$0.08
2 or more	\$0.12

Beginning with the first annual tax levy after the DLGF approves the tax rate, the municipal fiscal body may levy the tax annually. A tax levy must be advertised annually in the same manner as other tax levies. Cumulative capital development funds currently in place will continue as long as they are advertised and adopted in the budget.

The municipal legislative body may reduce or rescind the tax levy made under IC 36-9-15.5-6. If a municipality wishes to change the purposes for which the fund was established, it must follow the same steps used to originally establish the fund but the rate will remain the same.

Fifty (50) or more taxpayers in the municipality may file with the county auditor, not later than August 1 of any year, a petition for reduction or rescission of a tax levy. The petition must set forth the taxpayers' objections to the levy and be certified to the State Board of Tax Commissioners. The board shall give notice and conduct a hearing in the manner prescribed by IC 36-9-15.5-4(b). After the hearing, the board may reduce or rescind the levy, and its action is final and conclusive.

The money collected shall be held in a special fund to be known as the cumulative capital development fund. The money may not be expended for any purpose other than the purpose for which the tax was levied.

CUMULATIVE CAPITAL DEVELOPMENT FUND

(Continued)

Expenditures from the cumulative capital development fund may be made only after an appropriation made in the manner provided by law for making other appropriations. However, in a consolidated city, money may be transferred from the fund to the fund of a department of the consolidated city responsible for carrying out a purpose for which the cumulative capital development fund was created. The department may not expend any money so transferred until an appropriation is made and the department may not expend any money so transferred for operating costs of the department.

Money held in the cumulative capital development fund may be spent for purposes other than the purposes stated in IC 36-9-15.5-2, if the purpose is to protect the public health, welfare, or safety in an emergency situation that demands immediate action or to make a contribution to an authority established under IC 36-7-23. Money may be spent only after the executive of the municipality: (1) issues a declaration that the public health, welfare, or safety is in immediate danger that requires the expenditure of money in the fund; or (2) certifies in the minutes of the municipal legislative body that the contribution is made to the authority for capital development purposes.

SPECIAL FUEL TAXES

Please note the Indiana Department of Revenue has issued guidelines concerning the taxation, licensing, and reporting on special fuels. Inquiries may be directed to the Department of Revenue, Special Tax Division, at (317) 232-1854 or (317) 232-1845.

BOND ISSUES

There are many laws authorizing bonds to be issued for construction of or improvements to city or town buildings and structures, as well as for other purposes. When bonds are issued there are specific statutory requirements to be met in which city or town officials should be guided by the advice of bond counsel, with the proceeds to be accounted for in the manner provided in the bond ordinance or in the applicable law under which the bonds are issued.

BOND ISSUES

(Continued)

There are, however, certain uniform requirements in accounting for such funds which must be observed. These include:

1. Principal of Bond Issue – Only the principal of the proceeds of the bond issue may be receipted to a construction fund or to such other fund as designated in the applicable ordinance or law under which the bonds were issued.
2. Premium and Accrued Interest – The premium and accrued interest received from the sale of the bonds must be receipted into a bond and interest redemption fund or such other fund designated for the retirement of the bonds and interest.
3. Appropriations – Where the proceeds (principal) of the bonds are required to be appropriated, such as general obligation bonds of a city or town for any purpose, not more than the appropriation may be expended, regardless of the cash available in the fund for such purpose. An appropriation ledger sheet should be set up in back of the fund (cash) account in all instances where appropriations are required. Appropriations made from the proceeds of a bond issue do not lapse at the end of the year but remain in force, and the balance is carried forward each year, until the purpose for which the appropriations were made has been accomplished or abandoned. [IC 5-1-2-1]
4. Investments – The proceeds of a bond issue may be invested in the same manner as other county funds. [IC 5-13-9-1] The interest thereon shall be receipted to the general fund unless otherwise provided in the bond ordinance. The interest may be applied to the appropriate bond and interest or sinking fund. [IC 5-13-9-6] The interest may not, however, be expended without appropriation as discussed in the preceding paragraph (3).
5. Surplus Bond Proceeds – Any balance remaining after the purpose for which the bonds were issued has been accomplished or abandoned shall, by an order of the council entered of record, be transferred to the bond and interest redemption fund or may be used by a political subdivision for the same purpose or type of project for which the bonds were originally issued if the fiscal officer of the political subdivision certifies before or at the time of that use that the surplus was not anticipated at the time of the issuance of the bonds and the legislative body responsible for issuing the bonds takes action approving the use of surplus bond proceeds or investment earnings for the same purpose or type of project for which the bonds were originally issued.

RETURNED CHECKS

Concerning whether or not it would be proper for a city or town to enact an ordinance establishing a return check charge, IC 35-43-5-5 (e) states that it is a defense under subsection (a) if a person who: (1) Has an account with a credit institution but does not have sufficient funds in that account; and (2) Issues or delivers a check, a draft, or an order for payment on that credit institution; Pays the payee or holder the amount due, together with protest fees and any service fee or charge, which may not exceed greater of twenty-seven dollars and fifty cents (\$27.50) or five percent (5%) [but not more than two hundred fifty dollars (\$250)] of the amount due, within ten (10) days after mailing notice to the person that the check has not been paid.

Based upon the foregoing, it is our audit position that a city or town could enact a bad check service charge by local home rule ordinance if the amount of the charge did not exceed the amount listed in IC 35-43-5-5. We recommend the City Attorney review IC 26-2-7-3 and include language in such ordinance for pursuing returned checks not paid within ten (10) days.

Furthermore, IC 36-1-8-13 requires cities and towns to refer all dishonored checks for which they are not able to obtain payment to the prosecuting attorney for the county where the dishonored check was initially received not later than 90 ninety days after receipt of the check.

ESTABLISHING THE ESTIMATED COST OF CAPITAL ASSETS

When it is not possible to determine the historical cost of capital assets owned by a governmental unit, the following procedure should be followed.

Develop an inventory of all capital assets which are significant for which records of the historical costs are not available. Obtain an estimate of the replacement costs of these assets. Through inquiry determine the year or approximate year of acquisition. Then multiply the estimated replacement cost by the factor for the year of acquisition from the Table of Cost Indexes. The resulting amount will be the estimated cost of the asset.

In some cases estimated replacement cost can be obtained from insurance policies; however, if estimated replacement costs are not available from insurance policies, you should obtain or make an estimate of the replacement costs.

If the replacement cost is estimated to be \$76,000.00 and the asset was constructed about 1930, then the estimated cost of the asset should be reported as \$6,840.00.

$$\$76,000.00 \times .09 = \$6,840.00$$

TABLE OF COST INDEXES
1915 to 2003

<u>Year</u>	<u>Index</u>	<u>Year</u>	<u>Index</u>	<u>Year</u>	<u>Index</u>	<u>Year</u>	<u>Index</u>
2003	1.00	1978	.36	1954	.15	1931	.09
2002	.98	1977	.34	1953	.15	1930	.09
2001	.96	1976	.31	1952	.15	1929	.09
2000	.94	1975	.30	1951	.15	1928	.09
1999	.91	1974	.27	1950	.14	1927	.10
1998	.89	1973	.25	1949	.14	1926	.10
1997	.88	1972	.23	1948	.14	1925	.10
1996	.86	1971	.23	1947	.13	1924	.09
1995	.83	1970	.21	1946	.12	1923	.09
1994	.81	1969	.20	1945	.10	1922	.09
1993	.78	1968	.19	1944	.10	1921	.10
1992	.77	1967	.19	1943	.10	1920	.11
1991	.75	1966	.18	1942	.09	1919	.10
1990	.72	1965	.18	1941	.08	1918	.09
1989	.68	1964	.17	1940	.08	1917	.07
1988	.65	1963	.17	1939	.08	1916	.06
1987	.62	1962	.17	1938	.08	1915	.05
1986	.60	1961	.17	1937	.08		
1985	.59	1960	.17	1936	.08		
1984	.57	1959	.16	1935	.08		
1983	.55	1958	.16	1934	.07		
1982	.53	1957	.16	1933	.07		
1981	.50	1956	.15	1932	.08		
1980	.45	1955	.15				
1979	.40						

MOTOR VEHICLE EXCISE SURTAX AND WHEEL TAX

In accordance with the provisions of IC 6-3.5-4 and IC 6-3.5-5, the county council of each county may, by ordinance, impose a County Motor Vehicle Excise Surtax and a County Wheel Tax.

Collection of the Tax

Both the county motor vehicle excise surtax and the county wheel tax will be collected by the Bureau of Motor Vehicles and transmitted electronically to the county treasurer twice each week along with the auto license excise tax.

Allocation and Distribution of the Tax

Before the twentieth day of each month, the county auditor shall allocate the money deposited in both the County Surtax Fund and the County Wheel Tax Fund among the county and cities and towns in the county.

The county auditor shall allocate the money to counties, cities and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3) as follows:

I. In counties having a population of more than 50,000, 60% of the monies shall be distributed on the basis of population of the city or town as a percentage of the total population of the county and 40% distributed on the basis of the ratio of city and town street mileage to county road mileage.

II. In counties having a population of 50,000 or less, 20% of the monies shall be distributed on the basis of population of the city or town as a percentage of the total population of the county and 80% distributed on the basis of the ratio of city and town street mileage to county road mileage.

III. For the purposes of allocating funds as provided in this section, towns which become incorporated as a town between the effective date of decennial censuses shall be eligible for allocations upon the effectiveness of a corrected population count for the town under IC 1-1-3.5.

Use of Money by Cities and Towns

The distributions of surtax and wheel tax to cities and towns should be receipted to the Motor Vehicle Highway Fund (Street Fund), since a city or town may only use the money to construct, reconstruct, repair or maintain streets and roads under their jurisdiction. (IC 6-3.5-4-13 and IC 6-3.5-5-15)

PROMOTION OF CITY AND TOWN BUSINESS

IC 36-7-2-7 allows cities and towns to promote economic development and tourism. Such statute replaced a prior law which authorized cities and towns to budget and appropriate funds from the general fund to pay the expenses of, or to reimburse city or town officials as the case may be, for expenses incurred in promoting the best interest of the city or town. Accordingly, a Home Rule ordinance needs to be adopted in accordance with IC 36-1-3 in order to enable a city or town to pay for such expenses. Additionally, an appropriation for such expenses must also be obtained.

In an effort to assist cities and towns that have not passed an enabling ordinance but who wish to establish the promotion of business ordinance, we are repeating wording contained in the old statute. Many municipalities have used similar wording in their enabling ordinance.

"City and town councils are authorized to budget and appropriate funds from the general fund of the city, or town, to pay the expenses of or to reimburse city officials or town officials as the case may be, for expenses incurred in promoting the best interest of the city or town. Such expenses may include, but not necessarily be limited to, rental of meeting places, meals, decorations, memorabilia, awards, expenses incurred in promoting industrial, commercial, and residential development, expenses incurred in developing relations with other units of government and any other expenses of a civic or governmental nature deemed by the mayor or the town council to be in the interest of the city or town."

This is furnished only for your information. Each city and town should establish, by ordinance, the parameters for such appropriations and expenditures. Such ordinance should list the specific types of promotional expenses which can be paid from moneys appropriated for such purposes.